

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

PATRICK ECKER,)	FILED: MAY 20, 2008
)	08CV2913 TG
Plaintiff,)	JUDGE GRADY
)	MAGISTRATE JUDGE DENLOW
vs.)	Case No. 07-C-0371
)	Pending in the Eastern District of Wisconsin
WISCONSIN CENTRAL LTD.,)	
a corporation,)	
)	
Defendant.)	

**DEFENDANT WISCONSIN CENTRAL, LTD.'S PETITION
FOR AN ORDER COMPELLING THE KEEPER OF RECORDS AT HOEY & FARINA
TO DISCLOSE RECORDS IN RESPONSE TO SUBPOENA**

Defendant Wisconsin Central Ltd. ("WCL"), by its attorneys and pursuant to Fed.R.Civ.P. 37, petition the Court to enter an Order compelling the keeper of records at Hoey & Farina to disclose records in response to a subpoena served on March 24, 2008. As support for this Motion, WCL attaches hereto the Affidavit of James A. Fletcher and states as follows:

1. The action, brought by plaintiff in the Eastern District of Wisconsin pursuant to the Federal Employers' Liability Act, 45 U.S.C. §§ 51 et seq., arises out of an accident that occurred on June 21, 2005 in Wausau, Wisconsin. The plaintiff, an employee of WCL, claims to have been injured while working as a conductor in a WCL rail yard in Wausau.

2. Plaintiff has disclosed the following expert witnesses in the action pursuant to Rule 26(a)(2): Terry L. Cordray, M.S., CCM, ABVE, LPC; Malcom Cohen, Ph.D.; and Raymond A. Duffany. Mr. Cordray is a vocation rehabilitation counselor; Mr. Cohen is an economist; and Mr. Duffany is a civil engineer.

3. Plaintiff is respresented in this case by James L. Farina and his law firm, Hoey & Farina. Each of the three experts named by plaintiff in this case has been used as an expert witness in numerous prior cases by Hoey & Farina.

4. On March 24, 2008, WCL served a subpoena on the Keeper of Records at Hoey & Farina, requesting the following documents:

(1) Documents sufficient to show the total of all amounts paid by you (or any attorney in your firm) or by or on behalf of your clients to each of the experts for each year in the last five years (2003-2007), including, but not limited to all IRS Form 1099's issued by your firm with respect to each expert.

(2) For each of the experts, documents sufficient to show each lawsuit in connection with which your firm (or any attorney in your firm) has retained or utilized any services of the expert during the last five years (2003-2007).

(3) Documents sufficient to show all amounts (a) billed to and (b) paid by your firm to each of the experts in connection with work done on this case.

See subpoena attached hereto as "Exhibit A".

5. On April 4, 2008, Mr. Farina filed a pleading titled "Objections by James L. Farina, Hoey & Farina, P.C. and Plaintiff Patrick Ecker to Defendant's Subpoena to Plaintiff's Attorney," which is attached hereto as "Exhibit B". In the pleading Mr. Farina objects to the subpoena on the basis that he is plaintiff's attorney and that it is inappropriate for WCL to serve a subpoena on the Keeper of Records for his firm.

6. After a phone conference on Friday, May 16, 2008 at 5:46 p.m. in which counsel for WCL, Kristin M. Liddle spoke to James L. Farina in a good faith attempt to resolve differences, the parties were unable to reach an accord. Pursuant to LR37.2 an affidavit signed by Kristin M. Liddle is attached hereto as "Exhibit C".

7. The documents requested in the subpoena issued to the Keeper of Records are those which would show the amount of money that Hoey & Farina has paid to the disclosed experts in connection with prior cases; the amount of money that has been paid to the experts in this case; and the names of the prior cases where Hoey & Farina has used these individuals as experts.

8. The subpoena does not make Mr. Farina a witness, as claimed in the Objections - it seeks documents for Hoey & Farina, nor does the subpoena request information that is protected by the attorney-client or work product privilege. WCL is merely requesting documents that expand on what is already discoverable information under Rule 26(a)(2), which requires that when an expert is disclosed, certain information regarding cases that an expert has testified and the expert's compensation be provided.

9. The Seventh Circuit has not weighed in on whether a plaintiff's attorney or his law firm may be subpoenaed for documents evidencing usage of certain experts. However, courts *have* recognized that an attorney may be subpoenaed for deposition, even if he or she represents a party to the litigation in issue. *Hunt Int'l Resources Corp. v. Binstein*, 98 F.R.D. 689, 690 (N.D. Ill. 1983); see also *Marco Island Partners v. Oak Development Corp.*, 117 F.R.D. 418 (N.D.Ill. 1987); *Advance Systems, Inc. v. APV Baker PMC, Inc.*, 124 F.R.D. 200, 201 (E.D.Wis.1989). Numerous district courts within the Seventh Circuit have followed the approach outlined in *Shelton v. American Motors Corp.*, 805 F.2d 1323 (8th Cir. 1986).¹ See e.g., *Newell v. Wisconsin Teamsters Joint Council No. 39*, 2007 WL 2874938 (E.D.Wis. 2007)(Not reported in F.Supp.2d). The court in *Shelton* addressed situations during which it is

¹ See *Stalling v. Union Pac. R.R. Co.*, 2004 U.S. Dist. LEXIS (N.D.Ill. 2001); *Prevue Pet Products v. Avian Adventures, Inc.*, 200 F.R.D. 413, 418-19 (N.D. Ill. 2001); *Hernandez v. Longini*, 1997 U.S. dist. LEXIS 18679 (N.D. Ill. 1997); *M&R Amusements Corp. v. Blair*, 142 F.R.D. 304 (N.D.Ill. 1992); *Harriston v. Chicago Tribune Co.*, 134 F.R.D. 232 N.D. Ill. 1990); *Joslyn Corp. v. RTE Corp.*, 1988 U.S. Dist. LEXIS 10796 (N.D.Ill. 1988).

appropriate to take opposing counsel's deposition. In this case WCL does not seek to take Mr. Farina's deposition. While WCL merely seeks to compel production of certain documents from Hoey & Farina, the case law pertaining to the subpoena for deposition of plaintiff's attorney is instructive. In *Shelton* the party seeking the deposition must show that (1) no other means exist to obtain the information than to depose counsel; (2) the information sought is relevant and nonprivileged; and (3) the information is crucial to the preparation of the case. *Shelton*, 805 F.2d at 1327.

10. The subpoena issued to the Keeper of Records did not request that Mr. Farina appear at deposition to testify as to amounts his firm paid to the disclosed experts. Instead, the Keeper of Records was merely asked to disclose the accounting records evidencing payments to the disclosed experts and the names of the cases in which those experts were used. The least intrusive means available has been used to obtain the requested information. Moreover, the information sought is not available from other sources. The disclosed experts have claimed not to have records that would provide the information requested.

11. The information sought is relevant and nonprivileged. The amount paid to an expert over time by an attorney is relevant because it goes to the credibility of the expert witness. If an attorney repeatedly uses the same experts the credibility of those experts is an issue. Counsel for WCL has personally been involved in a number of cases where Hoey & Farina has used these same experts. Based on experience, counsel believes that payments received from Hoey & Farina represent a significant percentage of each expert's income. Needless to say, to the extent that any of these experts relies on Hoey & Farina for a significant percentage of his income, his credibility in this case will be adversely affected. Further, the

records showing amounts paid by plaintiff's attorney to experts in this matter are not covered by the attorney-client or work product privilege.

12. The information regarding payments made to experts and cases in which experts were used is crucial to preparation of the case because it goes to the credibility of plaintiff's experts. "The importance of credibility of witnesses cannot be overstated, and this is especially true with respect to expert witnesses." *Behler v. Hanlon*, 199 F.R.D. 553, 556 (D.Md. 2001). An important method used to impeach credibility is impeachment by demonstration of bias, prejudice, interest in the litigation or motive to testify in a particular fashion. *Id.* at 556-557. See also *United States v. Abel*, 469 U.S.45, 49-52 (1984) (permitting bias impeachment despite no rule of evidence specifically allowing it). "Since bias of a witness is always significant in assessing credibility, the trier of fact must sufficiently informed of the underlying relationships, circumstances, and influence operating on the witness to determine whether a modification of testimony reasonably could be expected as a probable human reaction." *Id.* at 556 citing Weinstein Treatise, § 607.04[1]. Examples of such relationships include business relationships and payment by a party such as that made to an expert witness. *Id.* The information requested in the subpoena served on the Keeper of Records will show the business relationship that plaintiff's counsel has with the expert witnesses. Because Hoey & Farina represents plaintiffs in FELA cases (and is doing so in this case), that relationship could affect the credibility of those experts and as such is discoverable evidence.

13. Finally, the information sought in the subpoena is readily available from Hoey & Farina's accounting records. Attached hereto as "Exhibit D" is a printout provided by Hoey & Farina to WCL's counsel in response to a subpoena in Mulrenin v. Chicago Rail Link, Case No. 05-L-014165, a case that is currently pending in Cook County.

WHEREFORE, WCL prays that the Court enter an Order compelling James L. Farina to disclose records in response to the subpoena dated March 21, 2008.

Dated: May 20, 2008

Respectfully submitted,

s/ James A. Fletcher
James A. Fletcher
Kristin M. Liddle
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 920
Chicago, Illinois 60606-2832
Telephone: (312) 252-1500
Facsimile: (312) 252-2400
Attorneys for WISCONSIN CENTRAL LTD.

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of May, 2008, I caused a true and correct copy of the **Defendant Wisconsin Central Ltd.'s Motion for an Order Compelling James L. Farina to Disclose Records in Response to Subpoena** to be served upon:

James A. Farina, Esq.
Hoey & Farina, P.C.
542 South Dearborn Street
Suite 200
Chicago, IL 60605
jfarina@hoeyfarina.com

Counsel for Plaintiff Patrick Ecker

s/ James A. Fletcher
James A. Fletcher

JUDGE GRADY

MAGISTRATE JUDGE DENLOW

AO 88 (Rev. 12/06) Subpoena in a Civil Case

Issued by the
United States District Court
EASTERN DISTRICT OF ILLINOIS

PATRICK ECKER,
 Plaintiff,

v.

WISCONSIN CENTRAL LTD.,
 Defendant.

SUBPOENA IN A CIVIL CASECASE NUMBER:¹ 07-CV-371

Pending in the Eastern District of Wisconsin

TO: Keeper of Records
 c/o James L. Farina
 Hoey & Farina
 542 South Dearborn Street, Suite 200
 Chicago, Illinois 60605

☐ YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects): All of the documents described on the attached Exhibit A within your possession, custody or control.

PLACE
 29 North Wacker Drive, Suite 920, Chicago, IL 60606

DATE AND TIME
 April 7, 2008 10:00 am.

☐ YOU ARE COMMANDED to produce and permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

Issuing Officer Signature and Title (Indicate if attorney for Plaintiff or Defendant) Date March 21, 2008

Issuing Officer's Name, Address, and Phone Number

James A. Fletcher, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606-2832 312/252-1500

EXHIBIT**A**

(See Rule 45, Federal Rules of Civil Procedure Parts C & D on Reverse)

¹ If action is pending in district other than district of issuance, state district under case number.

AO 88 (Rev. 1/94) Subpoena in a Civil Case

PROOF OF SERVICE

SERVED	March 24, 2008	DATE	Hoey + Farina	PLACE
SERVED ON (PRINT NAME)	James L. Farina		Hand delivery	MANNER OF SERVICE
SERVED BY (PRINT NAME)	by GRAVES		Mn	TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on 3-24-08
DATE

SIGNATURE OF SERVER
Chicago

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Parts C & D

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(2)(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection is made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance;

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and

shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

Hoey & Farina, P.C.
General Bank Journal
ALL DATES

Date	Received From/Paid To	Matter	Client	Acct#	Che/Rec#/Clr/Btch	Allocated	Entry Tot	Running Bal
Entry #	Explanation				G/L Acct	Cheque Receipt		
Apr 30/2004	Cavanaugh & Associates, Inc.	03-3084	SWAN, ROSALIE	2	16057			
3558	Swan - R				1085 Case Cost	375.00	375.00	-375.00
	Total for Apr 30/2004:	-375.00						
May 5/2004	Cavanaugh & Associates, Inc.	03-3084	SWAN, ROSALIE	2	16057			
3577	Swan - R				1085 Case Cost	375.00	3750.00	-4125.00
	Total for May 5/2004:	-3750.00						
Jul 13/2004	Cavanaugh & Associates, Inc.	02-2904	McGOWAN, BRIAN	2	16612			
5889	BRIAN MCGOWAN 2556 - R				1085 Case Cost	3113.75	3113.75	-7238.75
	Total for Jul 13/2004:	-3113.75						
Aug 3/2004	Cavanaugh & Associates, Inc.	03-3084	SWAN, ROSALIE	2	16792			
6055	Swan - R				1085 Case Cost	275.00	275.00	-7513.75
	Total for Aug 3/2004:	-275.00						
Aug 10/2004	Cavanaugh & Associates, Inc.	02-2904	McGOWAN, BRIAN	2	16868			
6816	2556/MCGOWAN - R				1085 Case Cost	4946.47	4946.47	-12460.22
	Total for Aug 10/2004:	-4946.47						
Aug 12/2004	Cavanaugh & Associates, Inc.	03-3084	SWAN, ROSALIE	2	16882			
6816	Swan - R				1085 Case Cost	2709.37	2709.37	-15169.59
	Total for Aug 12/2004:	-2709.37						
Sep 16/2004	Cavanaugh & Associates, Inc.	03-3084	SWAN, ROSALIE	2	17193			
7796	Swan 2559 - R				1085 Case Cost	2050.00	2050.00	-17219.59
	Total for Sep 16/2004:	-2050.00						
Oct 5/2004	CAVANAUGH AND ASSOCIATES	03-3084	SWAN, ROSALIE	2	17349			
8541	BRIAN MCGOWAN 2556 - R				1085 Case Cost	1300.00	1300.00	-18519.59
	Total for Oct 5/2004:	-1300.00						
Nov 4/2004	CAVANAUGH AND ASSOCIATES	03-3084	SWAN, ROSALIE	2	17549			
9769	SWAN 2559 - R				1085 Case Cost	460.00	460.00	-18979.59
	Total for Nov 4/2004:	-460.00						
Dec 7/2004	CAVANAUGH AND ASSOCIATES	03-3084	SWAN, ROSALIE	2	17549			
12873	SWAN				1085 Case Cost	1102.00	1102.00	-20081.59
	Total for Dec 7/2004:	-1102.00						
Dec 30/2004	CAVANAUGH AND ASSOCIATES	03-3084	SWAN, ROSALIE	2	18017			
12873	JAKOWINICZ/02-2844				1085 Case Cost	3500.00	3500.00	-23581.59
	Total for Dec 30/2004:	-3500.00						
Feb 4/2005	CAVANAUGH AND ASSOCIATES	03-3084	SWAN, ROSALIE	2	18321			
18321	JAKOWINICZ				1085 Case Cost	5907.81	5907.81	-29489.40
	Total for Feb 4/2005:	-5907.81						
May 5/2005	CAVANAUGH AND ASSOCIATES	03-3084	SWAN, ROSALIE	2	19043			
19413	KENSINGER 2388				1085 Case Cost	1906.94	1906.94	-31396.34
	Total for May 5/2005:	-1906.94						
May 23/2005	CAVANAUGH AND ASSOCIATES	03-3084	SWAN, ROSALIE	2	19176			
19413	NORRIS 2388				1085 Case Cost	3500.00	3500.00	-34896.34
	Total for May 23/2005:	-3500.00						
Jun 7/2005	CAVANAUGH AND ASSOCIATES	03-3084	SWAN, ROSALIE	2	19306			
20910	KENSINGER 2388 - 97=1850				1085 Case Cost	3786.60	3786.60	-38682.94
	Total for Jun 7/2005:	-3786.60						
Sep 9/2005	CAVANAUGH AND ASSOCIATES	03-3084	SWAN, ROSALIE	2	20108			
20910	NORRIS 2388				1085 Case Cost	193.75	193.75	-38876.69
	Total for Sep 9/2005:	-193.75						
Oct 11/2005	CAVANAUGH AND ASSOCIATES	03-3084	SWAN, ROSALIE	2	20364			
26609	JAKOWINICZ/2608 - 02-2844				1085 Case Cost	5486.25	5486.25	-44362.94
	Total for Oct 11/2005:	-5486.25						
Oct 12/2005	CAVANAUGH AND ASSOCIATES	03-3084	SWAN, ROSALIE	2	20364			
26710	NORRIS 2636/29-2912				1085 Case Cost	2983.29	2983.29	-47346.23
	Total for Oct 12/2005:	-2983.29						
Nov 3/2005	CAVANAUGH AND ASSOCIATES	03-3084	SWAN, ROSALIE	2	20606			
27840	JACOWINITZ 02-2844 - R				1085 Case Cost	621.25	621.25	-47967.48
	Total for Nov 3/2005:	-1951.25						
Nov 8/2005	CAVANAUGH AND ASSOCIATES	03-3084	SWAN, ROSALIE	2	20618			
27932	2556/MCGOWAN 02-2904 - R				1085 Case Cost	218.50	218.50	-49515.98
	Total for Nov 8/2005:	-218.50						
Jan 6/2006	CAVANAUGH AND ASSOCIATES	03-3084	SWAN, ROSALIE	2	21151			
30501	2556/MCGOWAN 02-2904 - R				1085 Case Cost	650.00	650.00	-50165.98
	Total for Jan 6/2006:	-650.00						
Feb 17/2006	CAVANAUGH AND ASSOCIATES	03-3084	SWAN, ROSALIE	2	21492 *			
32783	SHAW 05-4249 - R				1085 Case Cost	3500.00	3500.00	-53665.98
	Total for Feb 17/2006:	-3500.00						
Mar 3/2006	CAVANAUGH AND ASSOCIATES	03-3084	SWAN, ROSALIE	2	21658 *			
33619	Bodden 03-3082 - R				1085 Case Cost	3950.00	3950.00	-57615.98
	Total for Mar 3/2006:	-3950.00						
Jun 7/2006	CAVANAUGH AND ASSOCIATES	03-3084	SWAN, ROSALIE	2	22548 *			
38461	Bodden 03-3082 - R				0002 Client D:	347.94	347.94	-57963.92
	Total for Jun 7/2006:	-347.94						
Jul 11/2006	CAVANAUGH AND ASSOCIATES	03-3084	SWAN, ROSALIE	2	22819 *			
38608	Bodden 03-3082 - R				0002 Client D:	3767.50	3767.50	-61731.42
	Total for Jul 11/2006:	-3767.50						
Aug 3/2006	CAVANAUGH AND ASSOCIATES	03-3084	SWAN, ROSALIE	2	23109 *			
41479	Bodden 03-3082 - R				0002 Client D:	1036.62	1036.62	-62768.04
	Total for Aug 3/2006:	-1036.62						
Sep 3/2006	CAVANAUGH AND ASSOCIATES	03-3084	SWAN, ROSALIE	2	23109 *			
42108	Bodden 03-3082 - R				0002 Client D:	2194.42	2194.42	-64962.46
	Total for Sep 3/2006:	-2194.42						
Jan 5/2007	Cavanaugh & Associates, Inc.	04-4024	MULRENIN, PATRI	2	24738 *			
47996	Mulrenin 04-4024 - R				0002 Client D:	3800.00	3800.00	-68762.46
	Total for Jan 5/2007:	-3800.00						
Jan 9/2007	Cavanaugh & Associates, Inc.	03-3084	SWAN, ROSALIE	2	24773 *			
48902	Swan 2559 02-2904 - R				0002 Client D:	1444.90	1444.90	-70207.36
	Total for Jan 9/2007:	-1444.90						
Feb 9/2007	Cavanaugh & Associates, Inc.	05-4249	SHAW ERNIE	2	25148 *			
49582	2686 Shaw 05-4249 - R				0002 Client D:	2000.00	2000.00	-72207.36

Date	Received From/Paid To	Matter	Client	Acct#	Che/Rec#/Clr/Btch	Allocated	Entry Tot	Running Bal
Entry #	Explanation				G/L Acct	Cheque Receipt		
	Total for Feb 9/2007:	-2992.50						
	Total for Apr 10/2007:	-2552.75						
Apr 18/2007	Cavanaugh & Associates, Inc.	03-3082	BODDEN, THOMAS	2	25850 *	1812.78	1812.78	-77565.39
51860	2692 Bodden 03-3082 - R	03-3082		0002	Client D:			
	Total for Apr 18/2007:	-1812.78						
	Total for May 7/2007:	-4333.77						
May 9/2007	Cavanaugh & Associates, Inc.	05-4249	SHAW, ERNIE	2	26067 *	2100.00	2100.00	-83999.16
52509	2686 E. Shaw	05-4249		0002	Client D:			
	Total for May 9/2007:	-2100.00						
	Total for Jun 7/2007:	-2063.87						
Jun 8/2007	Cavanaugh & Associates, Inc.	03-3084	SWAN, ROSALIE	2	26363 *	7048.74	7048.74	-93111.77
53534	Swan 03-3084 - #2559 - R	03-3084		0002	Client D:			
	Total for Jun 8/2007:	-7048.74						
	Total for Jun 11/2007:	-822.94						
Jul 10/2007	Cavanaugh & Associates, Inc.	03-3084	SWAN, ROSALIE	2	26676 *	4805.94	4805.94	-98740.65
54535	Swan 03-3084 - R	03-3084		0002	Client D:			
	Total for Jul 10/2007:	-4805.94						
	Total for Jul 11/2007:	-722.00						
Aug 9/2007	Cavanaugh & Associates, Inc.	04-4024	MULRENIN, PATRI	2	27019 *	3238.31	3238.31	-102700.96
55577	Mulrenin #2753 - 04-4024 - R	04-4024		0002	Client D:			
	Total for Aug 9/2007:	-3238.31						
	Total for Oct 2/2007:	-3800.00						
Nov 6/2007	Cavanaugh & Associates, Inc.	04-4024	MULRENIN, PATRI	2	28008	590.00	590.00	-107090.96
58943	Mulrenin 04-4024 - #2753 - R	04-4024		0002	Client D:			
	Total for Nov 6/2007:	-590.00						

*** Bank Account Summary ***

Bank Account	Open Bal	Check Tot	Rcpt Tot	Balance
2 - Heritage - Case Cost	0.00	107090.96	0.00	-107090.96

*** G/L Account Summary ***

G/L Account	Debit	Credit
1038 - Heritage - Case Cost	0.00	107090.96
1085 - Case Cost Advances	57615.98	0.00
0002 - Client Disbursements	49474.98	0.00
Total:	107090.96	107090.96

REPORT SELECTIONS - General Bank Journal

Layout Template	Default
Requested by	ADMIN
Finished	Tuesday, November 27, 2007 at 03:46:44 PM
Ver	8.10b
Date Range	ALL DATES
Matters	All
Clients	All
Major Clients	All
Client Intro Lawyer	All
Responsible Lawyer	All
Assigned Lawyer	All
Type of Law	All
Select From	Active, Inactive, Archived Matters
Account	2 - Heritage - Case Cost
Check/Receipt #	All
G/L Account	All G/L Accounts
Receipt/Disb	All
Received From/Paid To	Cavanaugh
Sort by	Date
Include Corrected Entries	No
Include Daily totals	Yes
Totals Only	No
G/L Acct. Summary	Yes
Summary by Resp Lawyer	No

EXHIBIT A

DEFINITIONS

1. As used herein, the word "documents" means any writing, graphic matter and/or other object and/or tangible thing whether written, printed, produced by hand, recorded, produced by photographic or made tangible by any other process and any electronic or computer data stored on a hard drive, server, disc, CD Rom or other storage device.

2. As used herein, the term "experts" means Terry Cordray; Rehabilitation Expertise LLC; Malcolm Cohen; Employment Research Corporation; and Raymond Duffany.

DOCUMENTS TO BE PRODUCED

1. Documents sufficient to show the total of all amounts paid by you (or any attorney in your firm) or by or on behalf of your clients to each of the experts for each year in the last five years (2003-2007), including, but not limited to all IRS Form 1099's issued by your firm with respect to each expert.

2. For each of the experts, documents sufficient to show each lawsuit in connection with which your firm (or any attorney in your firm) has retained or utilized any services of the expert during the last five years (2003-2007).

3. Documents sufficient to show all amounts (a) billed to and (b) paid by your firm to each of the experts in connection with work done on this case.

FLETCHER & SIPPEL
ATTORNEYS AT LAW
29 N. WACKER DR., STE 920
CHICAGO, IL 60606-2832

107-06

HARRIS TRUST AND SAVINGS BANK
CHICAGO, IL 60608
2-2566/710

7074

3/21/08

PAY TO THE
ORDER OF

Hoggy + Farins

\$ 45.00

Forty five and 00/100

DOLLARS

Jane Schlepke

MEMO

MP

⑈007074⑈ ⑆1071025661⑆ 4801108210⑈

FLETCHER & SIPPEL, LLC / ATTORNEYS AT LAW

7074

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

PATRICK ECKER,

Plaintiff,

V.

WISCONSIN CENTRAL, LTD.

Defendant.

08CV2913

JUDGE GRADY

MAGISTRATE JUDGE DENLOW

TG

No. 07-CV-371

Judge William C. Griesbach

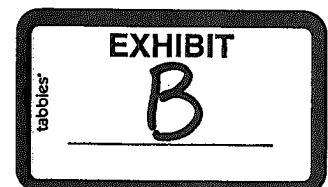
**OBJECTIONS BY JAMES L. FARINA, HOEY & FARINA, P.C. AND PLAINTIFF
PATRICK ECKER TO DEFENDANT'S SUBPOENA TO PLAINTIFF'S ATTORNEY**

Now come James L. Farina, Hoey & Farina and Plaintiff, Patrick Ecker, and for their objections to Defendant's Subpoena to Plaintiff's attorneys, James L. Farina and Hoey & Farina, P.C., state as follows:

1. Defendant, Wisconsin Central, Ltd. has caused to be served a subpoena on James L. Farina, and Hoey & Farina, P.C., counsel for Plaintiff, Patrick Ecker, requesting the following information:

1. Documents sufficient to show the total of all amounts paid by you (or any attorney in your firm) or by or on behalf of your clients to each of the experts for each year in the last five years (2003-2007), including, but not limited to all IRS Form 1099's issued by your firm with respect to each expert.
2. For each of the experts, documents sufficient to show each lawsuit in connection with which your firm (or any attorney in your firm) has retained or utilized any services of the expert during the last five years (2003 – 2007).
3. Documents sufficient to show all amounts (a) billed to and (b) paid by your firm to each of the experts in connection with work done on this case.

2. Serving Plaintiff's own attorney with a subpoena is so extraordinary that Plaintiff can find no case law which supports Defendant's actions in any civil action, prejudgment.



3. Plaintiff, Patrick Ecker, James L. Farina, and Hoey & Farina, object to the subpoena in that it necessarily converts Plaintiff's own attorneys into witnesses in this case. Explanation of records relating to payments made to the Plaintiff's expert witnesses in other cases would be necessary to explain methods of accounting that do not differentiate between expert witness fees, recoverable expenses, or expenses or fees for depositions subsequently repaid by Defendants.

4. The subpoena served on counsel for Plaintiff blurs the distinction between advocate and witness, a complication which is not necessary to because Rule 26(a)(2)(B) already requires experts to provide a list of cases where depositions or trial testimony has been given, and the fees charged for the experts' services. Accordingly, Plaintiff and counsel for Plaintiff believe the subpoena is completely inappropriate and objectionable, and seek an order quashing the subpoena, and providing any guidance this Honorable Court deems appropriate in this novel situation.

Respectfully submitted,

Patrick Ecker, Plaintiff

By: /s/James L. Farina
James L. Farina
Hoey & Farina
542 South Dearborn, Suite 200
Chicago, IL 60605
312/939-1212

CERTIFICATE OF SERVICE

James L. Farina, an attorney, certifies that he served a copy of the foregoing Objections by James L. Farina, Hoey & Farina, P.C. and Plaintiff, Patrick Ecker to Defendant's Subpoena to Plaintiff's Attorney upon the attorneys listed below by e-filing a copy with the United States District Court for the Eastern District of Wisconsin on April 4, 2008 and by U.S. Mail, from 542 South Dearborn Street, Chicago, IL.

James A. Fletcher
Kristin M. Liddle
Fletcher & Sippel, LLC
29 North Wacker Drive
Suite 920
Chicago, IL 60606-2875

/s/James L. Farina
James L. Farina

James L. Farina
HOEY & FARINA
542 S. Dearborn, Ste. 200
Chicago, IL 60605
(312) 939-1212

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

PATRICK ECKER,

Plaintiff,

VS.

WISCONSIN CENTRAL LTD.,
a corporation,

Defendant.

08CV2913

TG

JUDGE GRADY

MAGISTRATE JUDGE DENLOW

Case No. 07-C-0371

Pending in the Eastern District of Wisconsin

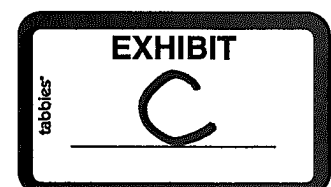
STATEMENT PURSUANT TO CIVIL L.R. 37.2

Kristin M. Liddle, one of the attorneys for defendant Wisconsin Central Ltd., states that on Friday, May 16, 2008 at approximately 5:46 p.m., she spoke by telephone with James L. Farina, counsel for plaintiff concerning the subject of this motion. They were unable to resolve differences, despite sincere attempts to do so.

Kristin M. Liddle

Kristin M. Liddle
Fletcher & Sippel LLC
29 North Wacker Drive, Suite 920
Chicago, Illinois 60606-2832
Telephone: (312) 252-1500
Facsimile: (312) 252-2400

Attorneys for WISCONSIN CENTRAL LTD.



Nov 27/2007

General Bank Journal

JUDGE GRADY

Page: 1

Date		Received From/Paid To	Matter		Client	Acct#	Che/Rec#/Clr/Btch	G/L Acct	MAGISTRATE JUDGE DENLOW			
Entry #	Explanation								Allocated			
									Cheque	Receipt	Entry Tot	Running Bal
Apr 30/2004	Cavanaugh & Associates, Inc.					2	16057					
3558	Swan - R		03-3084		SWAN, ROSALIE		1085 Case Cost		375.00		375.00	-375.00
	Total for Apr 30/2004:			-375.00								
May 5/2004	Cavanaugh & Associates, Inc.					2	16109					
3717	Retainer Swan - R		03-3084		SWAN, ROSALIE		1085 Case Cost		3750.00		3750.00	-4125.00
	Total for May 5/2004:			-3750.00								
Jul 13/2004	Cavanaugh & Associates, Inc.					2	16612					
5889	BRIAN MCGOWAN 2556 - R		02-2904		MCGOWAN, BRIAN		1085 Case Cost		3113.75		3113.75	-7238.75
	Total for Jul 13/2004:			-3113.75								
Aug 3/2004	Cavanaugh & Associates, Inc.					2	16798					
12511	2559/SWAN - R		03-3084		SWAN, ROSALIE		1085 Case Cost		275.00		275.00	-7513.75
	Total for Aug 3/2004:			-275.00								
Aug 10/2004	Cavanaugh & Associates, Inc.					2	16868					
6816	2556/MCGOWAN - R		02-2904		MCGOWAN, BRIAN		1085 Case Cost		4946.47		4946.47	-12460.22
	Total for Aug 10/2004:			-4946.47								
Aug 12/2004	Cavanaugh & Associates, Inc.					2	16889					
6876	SWAN 2559 - R		03-3084		SWAN, ROSALIE		1085 Case Cost		2709.37		2709.37	-15169.59
	Total for Aug 12/2004:			-2709.37								
Sep 16/2004	Cavanaugh & Associates, Inc.					2	17193					
7796	Swan 2559 - R		03-3084		SWAN, ROSALIE		1085 Case Cost		2050.00		2050.00	-17219.59
	Total for Sep 16/2004:			-2050.00								
Oct 5/2004	CAVANAUGH AND ASSOCIATES					2	17349					
8541	BRIAN MCGOWAN 2556 - R						1085 Case Cost		1300.00		1300.00	-18519.59
	Total for Oct 5/2004:			-1300.00								
Nov 4/2004	CAVANAUGH AND ASSOCIATES					2	17549					
9769	SWAN 2559 - R						1085 Case Cost		460.00		460.00	-18979.59
	Total for Nov 4/2004:			-460.00								
Dec 7/2004	CAVANAUGH AND ASSOCIATES					2	17849					
11606	2559/SWAN - R						1085 Case Cost		1102.00		1102.00	-20081.59
	Total for Dec 7/2004:			-1102.00								
Dec 30/2004	CAVANAUGH AND ASSOCIATES					2	18017					
12873	JAKOWINICZ/02-2844						1085 Case Cost		3500.00		3500.00	-23581.59
	Total for Dec 30/2004:			-3500.00								
Feb 4/2005	CAVANAUGH AND ASSOCIATES					2	18321					
15408	JAKOWINICZ						1085 Case Cost		5907.81		5907.81	-29489.40
	Total for Feb 4/2005:			-5907.81								
May 5/2005	CAVANAUGH AND ASSOCIATES					2	19043					
19413	KENSINGER 2388						1085 Case Cost		1906.94		1906.94	-31396.34
	Total for May 5/2005:			-1906.94								
May 23/2005	CAVANAUGH AND ASSOCIATES					2	19176					
20155	NORRED 99-2312 - R						1085 Case Cost		3500.00		3500.00	-34896.34
	Total for May 23/2005:			-3500.00								
Jun 7/2005	CAVANAUGH AND ASSOCIATES					2	19306					
20910	KENSINGER 2388 - 97=1850						1085 Case Cost		3786.60		3786.60	-38682.94
	Total for Jun 7/2005:			-3786.60								
Sep 9/2005	CAVANAUGH AND ASSOCIATES					2	20108					
22497	NORRED 2636						1085 Case Cost		193.75		193.75	-38876.69
	Total for Sep 9/2005:			-193.75								
Oct 11/2005	CAVANAUGH AND ASSOCIATES					2	20364					
26609	JAKOWINICZ/2608 - 02-2844 -						1085 Case Cost		5486.25		5486.25	-44362.94
	Total for Oct 11/2005:			-5486.25								
Oct 12/2005	CAVANAUGH AND ASSOCIATES					2	20390					
26710	NORRED 2636/99-2312 - R						1085 Case Cost		2983.29		2983.29	-47346.23
	Total for Oct 12/2005:			-2983.29								
Nov 3/2005	CAVANAUGH AND ASSOCIATES					2	20606					
27840	JACOWINITZ 02-2844 - R						1085 Case Cost		621.25		621.25	-47967.48
Nov 3/2005	CAVANAUGH AND ASSOCIATES					2	20607					
27843	NORRED 99-2312 - R						1085 Case Cost		1330.00		1330.00	-49297.48
	Total for Nov 3/2005:			-1951.25								
Nov 8/2005	CAVANAUGH AND ASSOCIATES					2	20618					
27932	2556/MCGOWAN 02-2904 - R						1085 Case Cost		218.50		218.50	-49515.98
	Total for Nov 8/2005:			-218.50								
Jan 6/2006	CAVANAUGH AND ASSOCIATES					2	21154					
30691	2556 MCGOWAN 02-2904 - R						1085 Case Cost		650.00		650.00	-50165.98
	Total for Jan 6/2006:			-650.00								
Feb 17/2006	CAVANAUGH AND ASSOCIATES					2	21492 *					
32783	SHAW 05-4249 - R						1085 Case Cost		3500.00		3500.00	-53665.98
	Total for Feb 17/2006:			-3500.00								
Mar 3/2006	CAVANAUGH AND ASSOCIATES					2	21658 *					
33579	Bodden 03-3082 - R						1085 Case Cost		3950.00		3950.00	-57615.98
	Total for Mar 3/2006:			-3950.00								
Jun 7/2006	CAVANAUGH AND ASSOCIATES					2	22548 *					
38461	Bodden 03-3082 - R						0002 Client D:		347.94		347.94	-57963.92
	Total for Jun 7/2006:			-347.94								
Jul 11/2006	CAVANAUGH AND ASSOCIATES					2	22849 *					
39988	Bodden 03-3082 - R						0002 Client D:		3767.50		3767.50	-61731.42
	Total for Jul 11/2006:			-3767.50								
Aug 3/2006	CAVANAUGH AND ASSOCIATES					2	23109 *					
41479	Bodden 03-3082 - R						0002 Client D:		1036.62		1036.62	-62768.04
	Total for Aug 3/2006:			-1036.62								
Sep 8/2006	CAVANAUGH AND ASSOCIATES					2	23427 *					
45118	Bodden 03-3082 - R						0002 Client D:		2194.42		2194.42	-64962.46
	Total for Sep 8/2006:			-2194.42								
Jan 5/2007	Cavanaugh & Associates, Inc.					2	24738 *					
47996	Mulrenin 04-4024 - R		04-4024		MULRENIN, PATRI		0002 Client D:		3800.00		3800.00	-68762.46
	Total for Jan 5/2007:			-3800.00								
Jan 9/2007	Cavanaugh & Associates, Inc.					2	24773 *					
48092	Swan 2559 03-3084 - R		03-3084		SWAN, ROSALIE		0002 Client D:		1444.90		1444.90	-70207.36
	Total for Jan 9/2007:			-1444.90								
Feb 9/2007	Cavanaugh & Associates, Inc.					2	25148 *					
49582	2686 Shaw 05-4249 - R		05-4249		SHAW, ERNIE		0002 Client D:		2992.50		2992.50	-73199.86

EXHIBIT

D

tabbles

General Bank Journal									
ALL DATES									
Date	Received From/Paid To	Matter	Client	Acct#	Che/Rec#/Clr /Btch	Allocated			
Entry #	Explanation				G/L Acct	Cheque	Receipt	Entry Tot	Running Bal
	Total for Feb 9/2007:	-2992.50							
Apr 10/2007	Cavanaugh & Associates, Inc.			2	25784 *				
51706	Swan 03-3084 - R	03-3084	SWAN, ROSALIE		0002 Client D:	2552.75		2552.75	-75752.61
	Total for Apr 10/2007:	-2552.75							
Apr 18/2007	Cavanaugh & Associates, Inc.			2	25850 *				
51860	2692 Bodden 03-3082 - R	03-3082	BODDEN, THOMAS		0002 Client D:	1812.78		1812.78	-77565.39
	Total for Apr 18/2007:	-1812.78							
May 7/2007	Cavanaugh & Associates, Inc.			2	26027 *				
52382	Bodden 03-3082 - #2692 - R	03-3082	BODDEN, THOMAS		0002 Client D:	4333.77		4333.77	-81899.16
	Total for May 7/2007:	-4333.77							
May 9/2007	Cavanaugh & Associates, Inc.			2	26067 *				
52509	2686 E. Shaw	05-4249	SHAW, ERNIE		0002 Client D:	2100.00		2100.00	-83999.16
	Total for May 9/2007:	-2100.00							
Jun 7/2007	Cavanaugh & Associates, Inc.			2	26346 *				
53489	Bodden 2692 - NR (Case Ser 03-3082)	03-3082	BODDEN, THOMAS		0002 Client D:	2063.87		2063.87	-86063.03
	Total for Jun 7/2007:	-2063.87							
Jun 8/2007	Cavanaugh & Associates, Inc.			2	26363 *				
53534	Swan 03-3084 - #2559 - R	03-3084	SWAN, ROSALIE		0002 Client D:	7048.74		7048.74	-93111.77
	Total for Jun 8/2007:	-7048.74							
Jun 11/2007	Cavanaugh & Associates, Inc.			2	26388 *				
53591	Mulrenin 04-4024 - R	04-4024	MULRENIN, PATRI		0002 Client D:	822.94		822.94	-93934.71
	Total for Jun 11/2007:	-822.94							
Jul 10/2007	Cavanaugh & Associates, Inc.			2	26676 *				
54535	Swan 03-3084 - R	03-3084	SWAN, ROSALIE		0002 Client D:	4805.94		4805.94	-98740.65
	Total for Jul 10/2007:	-4805.94							
Jul 11/2007	Cavanaugh & Associates, Inc.			2	26706 *				
54635	Mulrenin #2753 - 04-4024 - R	04-4024	MULRENIN, PATRI		0002 Client D:	722.00		722.00	-99462.65
	Total for Jul 11/2007:	-722.00							
Aug 9/2007	Cavanaugh & Associates, Inc.			2	27019 *				
55577	Mulrenin #2753 - 04-4024 - R	04-4024	MULRENIN, PATRI		0002 Client D:	3238.31		3238.31	-102700.96
	Total for Aug 9/2007:	-3238.31							
Oct 2/2007	Cavanaugh & Associates, Inc.			2	27589 *				
57406	Jones 06-4309 - R	06-4309	Jones, Anthony		0002 Client D:	3800.00		3800.00	-106500.96
	Total for Oct 2/2007:	-3800.00							
Nov 6/2007	Cavanaugh & Associates, Inc.			2	28008				
58943	Mulrenin 04-4024 - #2753 - R	04-4024	MULRENIN, PATRI		0002 Client D:	590.00		590.00	-107090.96
	Total for Nov 6/2007:	-590.00							

*** Bank Account Summary ***

Bank Account	Open Bal	Check Tot	Rcpt Tot	Balance
2 - Heritage - Case Cost	0.00	107090.96	0.00	-107090.96

*** G/L Account Summary ***

G/L Account	Debit	Credit
1038 - Heritage - Case Cost	0.00	107090.96
1085 - Case Cost Advances	57615.98	0.00
0002 - Client Disbursements	49474.98	0.00
Total:	107090.96	107090.96

REPORT SELECTIONS - General Bank Journal

Layout Template	Default
Requested by	ADMIN
Finished	Tuesday, November 27, 2007 at 03:46:44 PM
Ver	8.10b
Date Range	ALL DATES
Matters	All
Clients	All
Major Clients	All
Client Intro Lawyer	All
Responsible Lawyer	All
Assigned Lawyer	All
Type of Law	All
Select From	Active, Inactive, Archived Matters
Account	2 - Heritage - Case Cost
Check/Receipt #	All
G/L Account	All G/L Accounts
Receipt/Disb	All
Received From/Paid To	Cavanaugh
Sort by	Date
Include Corrected Entries	No
Include Daily totals	Yes
Totals Only	No
G/L Acct. Summary	Yes
Summary by Resp Lawyer	No